

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.213 OF 2007

Ashok @ Rahul Shamlal Agarwal ...Appellant

Versus

The Municipal Corporation of Gr.
Mumbai ...Respondent

Ms Geeta Shastri for the Appellant.
Ms Geeta Joglekar for the B.M.C.

CORAM : ABHAY S.OKA, J.
DATED : MARCH 22, 2007.

P.C.:

1. Admit. Advocate for the Respondent waives service. Taken up for hearing forthwith. By the impugned order passed by the Trial Court, prayer for ad-interim relief made by the Appellant/Plaintiff has been rejected. The challenge in the suit filed by the Appellant is to a notice issued by the Respondent-Corporation under section 354A of the Mumbai Municipal Corporation Act, 1888. The notice was issued on 31st January, 2007 and a reply was filed by the Appellant on 12th February, 2007 stating that he has not carried out any construction and the structure is in existence much prior to the year 1975.

2. considering the stand taken by the Appellant

that on the date on which notice was issued he was not carrying on any work, when Notice of Motion is yet to be heard, surely action of demolition cannot be taken by the Respondent. At the time of hearing of the Notice of Motion, the Trial Court will have to consider the material on record and to record a prima facie finding whether the Appellant was carrying on any construction.

3. In my view, this is a fit case where parties should have been directed to maintain status-quo as of today till the disposal of the Notice of Motion.

4. Hence, I pass the following order:

(i) That part of the impugned order dated 12th March, 2007 by which ad-interim relief is refused is set aside. The Appellant as well as the Respondents shall maintain status-quo in all respects as of today in respect of disputed structure till the disposal of Notice of Motion.

(ii) The Notice of Motion shall be disposed of as expeditiously as possible and preferably before the end of June 2007.

- (iii) All contentions of the parties on merits of the Notice of Motion are expressly kept open.
- (iv) The Trial Court will decide the Notice of Motion without being influenced by this order passed by this Court at ad-interim stage.
- (v) Appeal is partly allowed in above terms with no orders as to costs.
- (vi) Parties to act upon an authenticated copy of this order.

JUDGE